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December 6, 2017

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: Notice of *Ex Parte* in WC Docket No. 02-60

Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, we hereby provide notice of written and oral *ex parte* presentations in connection with the above-captioned proceeding. On Friday, December 1, 2017, John Windhausen, Executive Director of the Schools, Health & Libraries Broadband (SHLB) Coalition, and Jim Rogers of HealthConnect Networks, on behalf of the New England Telehealth Consortium (NETC) (attending telephonically), and undersigned counsel, met with Jay Schwarz, Legal Advisor to Chairman Pai. Mr. Windhausen and undersigned counsel then met with Travis Litman, Legal Advisor to Commissioner Rosenworcel. On Tuesday, December 5, 2017, Mr. Windhausen and undersigned met separately with Jamie Susskind, Chief of Staff to Commissioner Carr,[1] Claude Aiken, Legal Advisor to Commissioner Clyburn, Amy Bender, Legal Advisor to Commissioner O'Rielly, and staff from the Wireline Competition Bureau (WCB).[2]

The purpose of our meetings was to discuss the recently released draft Notice of Proposed Rulemaking and Order in the Rural Health Care (RHC) program (*Draft NPRM and Order*). Overall, we emphasized our strong support for the item and are pleased it is on the agenda for the December 14, 2017 Commission meeting. We identified some areas where we believe changes would improve the item.

In particular, as part of the proposed limited cap relief for funding year (FY) 2017,[3] we urged the Commission to fully fund all RHC applications that were submitted within the

[1] Also present was law fellow Jeffrey Westling.

[2] Present at the WCB meeting were the following: Ariel Roth, Legal Advisor, Office of the Bureau Chief, Radhika Karmarkar, Deputy Division Chief, Telecommunications Access Policy Division, and legal advisors Regina Brown, Dana Bradford, Soumitra Das, Beth McCarthy, Preston Wise, and Carol Pomponio.

[3] *See Draft NPRM and Order* at ¶¶ 105-106.

FY 2017 filing window (which is now closed) – even in the event available rollover funds prove insufficient. This will reduce burdens on the program administrator and avoid the hardships associated with the FY 2016 *pro rata* reductions. In the event the Commission does not fully fund FY 2017, we asked that the Order be changed so that available FY 2017 funding be distributed *pro rata*, without prioritizing individual applicants over consortia. Many consortia include rural safety net providers who would otherwise not have the wherewithal to participate in the Rural Health Care Program.[4] Before adopting any type of prioritization methodology the Commission should, at a minimum, develop a complete factual record on this issue as contemplated in the *Draft NPRM and Order*.[5]

In our meeting with WCB staff, we additionally discussed the importance of gathering greater information about the need for RHC funding. This information could be used to model RHC program funding demand for purposes of determining the appropriate funding cap[6] using the following variables: number of eligible HCPs, cost of eligible services (using publicly available data), and expected demand for eligible services. We observed, of those three data sets, the number of eligible HCPs should be straightforward to determine[7] – and that even if only the number of eligible HCPs can be reliably determined, that would be a useful benchmark for calculating an appropriate programmatic cap and potentially adjusting it over time.

The other areas we discussed are reflected in the attached (corrected) version of the bullet points we provided.

Sincerely,

Jeffrey A. Mitchell
Counsel to the SHLB Coalition and the New England Telehealth Consortium

Attachment

[4] "Safety net providers" are generally considered health care providers that offer care to patients regardless of their ability to pay for services. A substantial share of their patient mix are uninsured, Medicaid, and other vulnerable patients. See *SHLB Petition for RHC Rulemaking* at 10. NETC, for example, submitted applications for 2017 funding that included 201 rural safety net health care providers in Maine, New Hampshire and Vermont. These entities all rely on the consortium to handle their USAC filings.

[5] *See Draft NPRM and Order* at ¶¶ 18-31.

[6] *See id.* at ¶ 15 ("Should we consider the universe of potential rural healthcare providers and estimate the average or median support needed?").

[7] *See SHLB Petition for RHC Rulemaking* at 24-30.

SHLB Coalition Response to Draft Order and NPRM on the Rural Healthcare Program

Aspects we support:

- Seeking comment on the amount of funding for the RHC program.
- Seeking comment on how to prioritize funding for rural Healthcare providers in case of a lack of funding.
- Ordering the rollover of prior year unused funds to future years.
- Considering how to streamline consortia applications.

Aspects we oppose and would like to see changed:

- The Order would give priority to individual applications for rollover funds. Individual applications should not be prioritized over consortia applications – they both should be treated equally.
    - Consortia especially help rural HCPs because rural HCPs often cannot afford to apply on their own.
    - All SHLB members, including from Alaska, agree that the Order should treat individual applications and consortia applications equally.

Aspects we are concerned about:

- Adding an additional layer of enhanced review in the Telecom Program by analyzing the cost-effectiveness of each application gives USAC too much discretion.
    - Going through a fair and open competitive bidding process should be sufficient.
- The current application window (January 1 – April 30) is too short a period of time for applicants to initiate bidding and finalize a contract. (This is not in the NPRM but will have a big impact on future demand.)

Additional issues we would like to see opened for comment:

- Transparency: The RHC program ought to publish data about the use of the program on a regular basis, similar to the E-rate program. The draft Order and NPRM has good data that has never been published before now.
- List of services: Whether there should be an Eligible Services List in the RHC program, as in E-rate?
- HCF Cap: Should be Healthcare Connect Fund "cap within the cap" be maintained or adjusted (currently $150M)?
- Joint applications: How could the E-rate and RHC programs be aligned and harmonized so applicants could build one network to serve these eligible entities?
- Remote patient monitoring: How could this service be eligible for RHC support to improve rural telemedicine?
- Administrative expenses: Should the administrative expenses of forming a consortium be eligible for RHC support? This would help encourage more consortia to be created.
- Data Collection: The NPRM should ask commenters to submit data on the rural healthcare market, number of HCPs, and the costs of providing such bandwidth
- USAC Resources: How can USAC be provided with additional resources and staff to process applications more quickly?